Supreme Court, U.S.
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No. (1)

IN THE SUPREME COURT OF THE UNITED STATES

Raymond W. Konan,

Petitioner

v.

Noel D. Sengel;
Stephen H. Ratliff,
Karen A. Gould,
Barbara S. Lanier, and
Stephen M. Hall,

Respondents

On Petition for Writ of Certiorari
To U. S. Court of Appeals,
Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Respectfully requested:

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A. Questions Presented for Review

1. Dismissal Based on Prior Complaint

Shall a Fourth Circuit Court of Appeals decision of case dismissal that is obviously decided on an earlier terminated complaint, instead of the operative replacement Amended Complaint, be allowed to stand, or shall it be corrected?

2. Court of Appeals Decided on Prior Complaint And New Law Point Not Addressed by Parties

Shall a Circuit Court of Appeals summary dismissal of all claims against all defendants on a point of law that was not addressed by the parties, referencing a prior terminated complaint, instead of the replacement Amended Complaint, be allowed to stand, or does sound judicial discretion require remanding to give the parties an opportunity to address these issues?

3. Rooker-Feldman Doctrine Applied for "No Jurisdiction"

Is the Fourth Circuit Court of Appeals correct or in error when it applies the Rooker-Feldman Doctrine and rules that the United States District Court has no jurisdiction to hear Appellant attorney's civil rights claims against five state officials who were involved in the revocation of his law license, each sued in individual capacity, per Title 42 United States Code, Section 1983?

B. PARTIES

Appellant

Raymond W. Konan, an individual Virginia attorney, who had his law license revoked, and who is suing five individuals involved for violating his U.S. Constitutional rights to equal protection and due process of law.

Appellees

Noel D. Sengel, an individual, who acted as a prosecuting state bar counsel.

Stephen H. Ratliff, an individual, who acted as Virginia State Bar Subcommittee Chairman.

Karen A. Gould, an individual, who acted as a Bar Disciplinary Board Chairperson.

Barbara S. Lanier, an individual, who acted as a Clerk of the Bar's disciplinary System.

Stephen M. Hall, an individual, who acted as a representing attorney for the Virginia State Bar.

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1. Judgment dated July 6, 2007, of Fourth Circuit of Appeals, affirming dismissal of petitioner Konan's claims against all defendants, citing the Rooker-Feldman Doctrine, ruling there was no jurisdiction in

the U.S. District Court. (Mistakenly shows Justices of Virginia Supreme Court as defendants. They were not.) p. 25

2. U.S. District Court Order of September 14, 2006, granting dismissal of Konan's equal protection claims, but denying dismissal of his claims of due process violations by the five defendants. p. 30

3. U.S. District Court Memorandum Opinion, Sept. 14, 2006, explaining partial dismissal of Konan's claims. p. 31.

4. U.S. District Court Memorandum Opinion of November 7, 2006, dismissing due process violations claims against the five individual defendants on a rationale of equitable estoppel. p. 38.

5. Fourth Circuit's Denial of Petition for Rehearing, dated Sept. 7, 2007. (Mistakenly shows Justices of Virginia Supreme Court as defendants. They were not.) p. 45.

6. Amended Complaint of June 20, 2006, claiming five individuals acting under color of state law violated attorney Konan's U.S. Constitutional rights to due process of law and equal protection of law, and claiming compensation, under 42 USC 1983. p. 50.

7. Opinion of February 13, 2004, of Virgnia Supreme Court upholding the law license revocation of the Virginia State Bar Disciplinary Board (cited as basis for an equitable estoppel dismissal of all due process claims by the U.S. District Court). p. 83.

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Bolden v. City of Topeka, 441 Fed. 3d 1129, 1138 (10th Cir. 2006)

Burke v. Johnston, 452 F.3d 665 (7th Cir., 2006)

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Davani v. Virginia Dep't of Transp., 434 F.3d 712, 718 (4th Cir. 2006)

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Skit Int'l, Ltd v. DAC Technologies of Ark. Inc.
____F3d.___ (8th Cir., 2007)

Smith v. U.S. Court of Appeals, Tenth Circuit,
484 F.3d 1281 (10th Cir., 2007)*Thomas v. Eby*, 481
F.3d 434 (6th Cir., 2007)

Torromeo v. Town of Fremont, 438 F.3d 113 (1st Cir., 2006)

Turner v. Crawford Square Apartments III,
449 F.3d 542 (3rd Cir., 2006)

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42 United States Code Sec. 1983, p.47.

D. Complaint, Opinions, and Orders Provided Verbatim in Appendix

1. ~~Judgment~~ dated July 6, 2007, of Fourth Circuit of Appeals, affirming dismissal of petitioner Konan's claims against all defendants, citing the Rooker-Feldman Doctrine, ruling there was no jurisdiction in the U.S. District Court. (Mistakenly shows Justices of Virginia Supreme Court as defendants. They were not.) p. 25.

2. U.S. District Court Order of September 14, 2006, granting dismissal of Konan's equal protection claims, but denying dismissal of his claims of due process violations by the five defendants. p. 30.

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6. Amended Complaint of June 20, 2006, claiming five individuals acting under color of state law violated attorney Konan's U.S. Constitutional rights to due process of law and equal protection of law, and

claiming compensation, under 42 USC 1983. p. 50.

7. Opinion of February 13, 2004, of Virgnia Supreme Court upholding the law license revocation of the Virginia State Bar Disciplinary Board, cited as basis for an equitable estoppel dismissal of due process claims by the U.S. District Court. p. 83.

E. U.S. Supreme Court Jurisdiction

1. The judgment of the Fourth Circuit that is questioned was dated July 6, 2007. The petition for rehearing was denied September 7, 2007. No cross petition is expected. This petitioner was given another 60 days, until April 15, 2008, to correct and refile this Petition for Certiorari.

2. U.S. District Court jurisdiction is provided by 42 U.S.C. Sec. 1983 and 28 U.S.C. Secs. 1254, 1331, and 1343.

3. The United States Code provides that appeals from the U.S. Circuit Courts of Appeal shall be decided by this United States Supreme Court. Specifically, 28 USC Sec. 1254 reads in pertinent part:

   "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: By writ of certiorari granted upon the petition of any party . . ." Full text at p. 48.

4. All other parties have been served through their attorney, Assistant Attorney General Mike F. Melis,

Office of the Attorney General, Richmond, Virginia 23219.

F. Constitutional Provisions and Statutes

Fourteenth Amendment to U.S. Constitution p. 47.

Title 42 United States Code, Section 1983 p. 47.

G. STATEMENT OF THE CASE

Attorney Raymond Konan was hired by a U.S.-based Pakistani newspaper and by a Russian journalist who worked for Izvestia newspaper to represent them in suits brought by reputed criminals from those countries who were suing them for defamation. After those claims were dismissed by consent orders, the attorneys for the two alleged criminals filed bar complaints against attorney Konan. They were taken up by Bar Counsel Noel D. Sengel. Prosecuting bar counsel

Noel D. Sengel signed the name of the State Bar Subcommittee chair "*Stephen H. Ratliff,*" on the charges of attorney misconduct that she wrote up and that she certified as from the Subcommittee, reportedly with Subcommittee Chair approval. Disciplinary System Clerk Barbara S. Lanier set up a hearing with the Disciplinary Board. The Board decided to revoke attorney Konan's license to practice law on June 27, 2003.

Two weeks later, Disciplinary Board Chairperson Karen A. Gould signed what she called a "*memorandum order*" that criticized attorney Konan's character and competence to practice law and ordering the revocation of attorney Konan's license to practice law in Virginia. Attorney Konan appealed to the Virginia Supreme Court, but it upheld the revocation. After briefs were filed, attorney Konan learned that the charges against him had not come from the jurisdiction-giving Bar Subcommittee, but from Bar Counsel Sengel. At the State Supreme Court hearing, attorney Stephen M. Hall, from the state attorney general's office, representing the state bar, provided hearsay testimony that there always was a written authorization from the Subcommittee when Bar

Counsel signed charges in the name of the Subcommittee, but it could not be found in time. Attorney Konan challenged the Board's revocation order as without jurisdiction, without clear and convincing evidence of attorney wrong-doing, and as abuse of discretion.

The State Supreme Court declined to hear due process issues.

After confirming a) that the *"charges of misconduct"* came from bar counsel without authorization from the Subcommittee, b) that the chairman allowed it, c) that the"memorandum order" of law license revocation issued in the name of the Disciplinary Board contained many false statements of fact and suggestions of law, and d) that it came from only one member of the Board, not from the Board as a body, attorney Konan filed claims against the individual defendants for violating his civil rights by their individual derelictions of duty.

That original U.S. District Court complaint of February, 2006, under 42 USC Sec. 1983, first included the justices of the state supreme court. In June, 2006, attorney Konan filed an Amended Complaint (p. 50) that replaced the original complaint, terminating it, and removing all of the justices as defendants. U.S. District Court jurisdiction is provided by 28 USC 1254, 1331, and 1343. The Amended Complaint was the only operative complaint in the U.S. District Court, as the Court's Docket Sheet shows.

The District Court dismissed attorney Konan's claims of denial of equal protection of law as

insufficient to state a claim, and then later summarily dismissed all claims of denial of due process on a rationale of collateral estoppel. That completed dismissal of all of attorney Konan's claims against all five of the individual defendants whom he had claimed wronged him.

Attorney Konan appealed those dismissals to the Fourth Circuit Court of Appeals. The Fourth Circuit, focusing on the original terminated complaint, instead of the replacement Amended Complaint, cited the Rooker-Feldman Doctrine, and upheld the District Court's dismissals on its modified rationale that the U.S. District Court had no jurisdiction.

Attorney Raymond Konan here petitions for a writ of certiorari.

H. ARGUMENT, REASONS FOR WRIT OF CERTIORARI

1. Dismissal Was Based on Prior Complaint That Was Replaced.

The Fourth Circuit Court of Appeals decision of case dismissal is obviously decided by mistake on an earlier terminated complaint, instead of the operative replacement Amended Complaint. That is clearly shown by the style of the case shown on the per curiam unpublished Judgment of July 6, 2007, in the Appendix, p. 25. It shows Justices of the Supreme Court of Virginia as defendants. They were named defendants only in the original complaint filed on February 13, 2006. They were not in the replacement Amended Complaint filed on June 20, 2006, the operative pending complaint.

The same error of focus on the wrong, superseded complaint is also evidenced by these other documents of the Fourth Circuit that all show, incorrectly, that justices were defendants, when they were not: Denial of Petition for Rehearing and Mandate. Copies of the documents are in the Appendix, p. 23.

This egregious error by the Fourth Circuit Court of Appeals effectively denies due process of law. It should not be allowed to stand. How can a party's claims be fairly considered when the the wrong claims – obsolete claims -- are reviewed, instead of the correct pending claims? Remand can remedy this egregious error. This case should be remanded for consideration of the correct Amended Complaint, in which none of the five named defendants is a justice of any court. In no way does the Amended Complaint seek a federal court review of any state court decision or any state action. That is clear from the text of the Amended Complaint (in Appendix, p. 50.

Granting the requested Writ of Certiorari will permit the appropriate correction and provide for a fair review in the Fourth Circuit Court of Appeals. Denial of certiorari will leave injustice and a gross embarrassment for the Fourth Circuit Court of Appeals and for our American legal system. It could have the very negative result of reduced respect for our courts.

2. **Court of Appeals Decided on New Points Not Addressed by Parties**

The Fourth Circuit Court of Appeals dismissed all claims against all defendants on a point of law that was not addressed by the parties, with no prior notice to them before its dismissal. Thus, the parties had no opportunity to argue their case on the Rooker-Feldman Doctrine, which thE parties, and the Virginia State Attorney General, as the defendants' attorney, did not deem relevant, and which they did not brief or argue. With no notice, and with no input from the parties or their attorneys, the per curiam opinion of the Fourth Circuit applied that new point of law as the basis for its summary dismissal of all of attorney Konan's claims against all five of the individual Defendants. (Without party input, the Fourth Circuit got it completely wrong.)

Sound judicial discretion requires that the parties be given an opportunity to address the new issue raised for the first time in and by the Court of Appeals panel, namely the Rooker-Feldman Doctrine. Indeed, due process of law in this case would seem to require it.

3. **Rooker-Feldman Doctrine Means "No Jurisdiction?"**

This Appellant attorney submits that the Fourth Circuit Court of Appeals is in error when it cites the Rooker –Feldman Doctrine and rules that the United States District Court has no jurisdiction to hear any of this petitioner attorney's claims. They are against individual state officials for their

violations of attorney Konan's civil rights. Konan sued each of the five defendants in their individual capacity, per Title 42 United States Code, Section 1983, for individually violating his United States Constitutional rights. Those rights are for Equal Protection of Law and Due Process of Law, guaranteed by the Fourteenth Amendment of the United States Constitution.

The United States Code, 42 USC Sec. 1983, clearly provides a cause of action:

> *"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . ."*
>
> 42 USC 1983, full text at p. 47.

Attorney Konan notes that each of the individual defendants acted in different times, in different ways, all under the color of state law, but contrary to the law and contrary to their official duties. Those derelictions of duties by the individuals are at issue, not state decisions. The year before attorney Konan's complaint, this United States Supreme Court clearly limited the Rooker-Feldman doctrine. This Supreme Court stated it is confined to

> *"cases brought by state-court losers complaining of injuries caused by state-court*

judgments rendered before the district court proceeding commenced and inviting district court review and rejection of those judgments."

Exxon Mobil Corp. v. Saudi Basic Industries Corp.,
544 U.S. 280, 284 (2005).

The Rooker-Feldman Doctrine does not apply here because there had been no prior litigation between these parties, and no state court action or decision is challenged or sought to be reviewed. The parties, the Virginia Attorney General's Office, and the U.S. District Court had all agreed on that. The Amended Complaint of June 20, 2006, is clear on this point.

In *Lance, et al. v. Dennis*, further guidance was provided by this U.S. Supreme Court:

"Neither Rooker *nor* Feldman *elaborated a rationale for a wide-reaching bar on the jurisdiction of lower federal courts, and our cases since Feldman have tended to emphasize the narrowness of the* Rooker-Feldman *rule."*

This Supreme Court went on in that same opinion to repeat a warning that the lower courts have sometimes extended *Rooker-Feldman* too far --

"far beyond the contours of the Rooker *and* Feldman *cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts . . ."*

Lance, et al. v. Dennis, 546 U.S. (2006).

The Fourth Circuit opinion here under review is in conflict with at least three decisions of the United States Supreme Court and a prior correct decision of the Fourth Circuit, itself, *Davani v. Dennis*, 546 U.S. (2006). It conflicts with all ten of the other United States Circuit Courts of Appeals. For example, see the following decisions, arranged by Circuits, from First Circuit Court of Appeals through to the Eleventh:

Torromeo v. Town of Fremont, 438 F.3d 113 (1st Cir., 2006)

Davison v. Gov. of Puerto Rico, Firefighters Corps., 471 F.3d 220 (1st Cir., 2006)

Mitskovski v. Buffalo, Ft Erie, Bridge Auth, 435 F.3d 127 (2nd Cir., 2006)

McKithen v. Brown, 481 F.3d 89 (2nd Cir., 2007)

Turner v. Crawford Square Apartments III, 449 F.3d 542 (3rd Cir., 2006)

Turner v. Secretary Housing & Urban Devel., 449 F.3d 536 (3rd Cir., 2006)

Davani v. Virginia Dept. of Transp., 434 F.3d 712 (4th Cir., 2006)

Adkins v. Rumsfeld, 464 F.3d 456 (4th Cir., 2006)

Lowe v. Hearst Communications, Inc., ____F3d.___ (5th. Cir., 2007)

Abbott v. Michigan, 474 F.3d 324 (6th Cir., 2007)

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Jones v. Brennan, 465 F.3d 304 (7th Cir., 2006)

Mosby v. Ligon, 418 F.3d 927 (8th Cir., 2005)

Dornheim v. Sholes, 430 F.3d 919 (8th Cir., 2005)

Skit Int'l, Ltd v. DAC Technologies of Ark. Inc. ____F3d.___ (8th Cir., 2007)

Henrichs v. Valley View Development, 474 F.3d 609 (9th Cir., 2007)

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Wolfe v. George, ____F3d.___ (9th Cir., 2007)

Mann v. Boatright, 477 F.3d 1140 (10th Cir., 2007)

Smith v. U.S. Court of Appeals, Tenth Circuit, 484 F.3d 1281 (10th Cir., 2007)

Sibley v. Lando, 437 F.3d 1067 (11th Cir., 2005)

In re Ford Motor Co., 471 F.3d 1233 (11th Cir., 2006)

The Fourth Circuit has conspicuously, and mistakenly, stepped out of line from this U.S. Supreme Court's clarification in *Exxon Mobil, Id,* and *Lance, et al. v. Dennis*, Id. It has ruled in conflict with all ten other Circuits. This egregious error needs correction. Because this case involves a practicing lawyer, a state-wide attorney disciplinary system, and the states' management and regulation of the practice of law, *ipso facto*, it poses questions of exceptional importance to the judicial system and to our country.

In order to preserve our United States Constitutional rights, no one should be allowed to violate them with impunity.

No one shall stand above the law and above accountability for violations of Constitutional rights – not even governmental employees acting under color of law.

This case involves allegations of abuse of authority by public officials who, under color of law, violate the law and take away Constitutional rights. It also involves a Circuit Court of Appeal that has reviewed the wrong complaint and misapplied the law in this case of an attorney seeking damages for violations of his rights to equal protection and due process of law. He is not seeking review of the Disciplinary Board's law license revocation, or of the Virginia Supreme Court decision that upheld it. The damages relief sought in the Amended Complaint will not change those decisions or alter their results.

One Circuit may not disregard the law that has been succinctly clarified by the U.S. Supreme Court and followed by all of the other Circuit Courts of Appeal throughout the country. Indeed, our U.S. Constitutional rights are already infringed, if we cannot know that we have access to the courts to redress their violations.

As the Appellant attorney's Amended Complaint clearly spells out, this case involves disguise and deception that allegedly defeated a fair hearing in both a state bar disciplinary proceeding and in court. That individual conduct must be reviewable if due process is to be preserved. Equal protection of law requires it.

This importance is magnified when it is a disciplinary system for lawyers that is involved, because lawyers are among the most influential of our leaders. We are law makers and judges of law. We lawyers are the front-line protectors of civil rights and personal liberties.

Issues with Different Defendants

The Fourth Circuit dismissed all claims against all Defendants citing the Rooker-Feldman Doctrine and ruling that there was no jurisdiction in the U.S. District Court for any of them. In a broad-brush sweep, it seems to conclude that all of them were somehow covered by prior State Court decisions. They were not. None of them were. The Amended Complaint clearly so states.

Perhaps the clearest example is the claim in the Amended Complaint of defamation against one member of the Virginia State Bar Disciplinary Board, for individually writing and issuing an unauthorized and defamatory "memorandum order" in the name of the Disciplinary Board, but without the Board acting as a body, and without authority. These facts did not emerge until long after the Disciplinary Board's and Virginia court's license revocation actions. Appellant attorney's request for damages under 42 USC Sec. 1983 in no way affects or can affect any state court decision or action. Those matters are different and completely separate. See Amended Complaint, paras. 77-82 in Appendix at p. 50.

Another of Appellant attorney Konan's claims in his Amended Complaint that could not possibly have been dealt with before by any state court or its agencies is the claim against Stephen Hall. The Amended Complaint in paras. 83-92 summarize claims of wrongs by attorney Stephen Hall, not in getting Mr. Konan's law license revoked, but in preventing a fair hearing in the Virginia Supreme Court. The facts of Hall's violations of attorney Konan's U.S. Constitutional rights to equal protection and due process were not revealed until after the briefs had already been filed in the Virginia Supreme Court. There was no judicial review of his actions by the Virginia Supreme Court, or by other state court or body. Accordingly, there can be no issue of federal courts affecting state court decisions. There is no Rooker-Feldman issue.

Similarly, none of the claims against the other defendants require any overruling or any contradiction of any decision of any state court or other state body. The granting of compensation relief as requested with respect to all of the five defendants in the Amended Complaint would effect no change in the decisions or actions of the state court or any state body.

With respect to the claims against defendant Stephen Ratliff, the chairman of a State Bar Subcommittee, the facts of the allegations were learned only after the Disciplinary Board decision of law license revocation, and after briefs had already been filed for the Virginia Supreme Court review. It follows, *ipso facto*, that there was no prior adjudication of these issues by the Disciplinary Board or by the court. The later facts that were learned are these that form the basis for attorney Konan's claim against defendant Ratliff as spelled out in the Amended Complaint:

a. He purported to act individually with the power of the Bar Subcommittee, when the Subcommittee can act only in quorum, as he knew or should have known.
b. He allowed a bar counsel to sign his name on her charges of attorney misconduct, making her charges look like charges from his Subcommittee, but the Subcommittee members never even saw the charges sent in their name.
c. He allowed a bar counsel to certify her charges as from the Bar Subcommittee in the name of the Subcommittee, when the

members of the Subcommittee never even saw them.

d. Ratliff knew that Disciplinary Board jurisdiction depended on a quorum of his Subcommittee making charges of attorney misconduct and certifying them to the State Bar Disciplinary Board, but he allowed the cases to proceed without any such actions by his Subcommittee.

e. These issues were not briefed for the Disciplinary Board or for the State Supreme Court, because they were disguised and not discovered until after the Disciplinary Board Hearing and after the briefs had been filed for the State Supreme Court.

f. No state court or body has ruled on these allegations against this defendant.

g. No state court or body action or decision is challenged by these claims, and none will be affected by the granting of the relief sought, money damages for the alleged violations of due process and equal protection of law.

See Amended Complaint paras. 3, 5, and 6, 46-54, and 105-112, in Appendix, starting at p. 50.

With respect to defendant Noel Sengel, the facts of her wrongful actions had been disguised and were not discovered until after the Disciplinary Board hearing and after the briefs had been filed in the state supreme court review of the Board decision of law license revocation. It follows that they were not at issue in the Board proceedings. They were not for decision in state court review. What are these

later-discovered wrongs for which attorney Konan claims damages under 42 USC 1983?

a. Bar counsel knew that proper charges of attorney misconduct for Disciplinary Board review and action had to come from the jurisdiction-giving Bar Subcommittee.

b. Bar counsel wrote up her own charges of misconduct against the Appellant attorney.

c. Without the Subcommittee acting on them, she sent them to the Disciplinary Board as coming from the Subcommittee.

d. Without any written authorization, she forged the name of the Subcommittee chairman on her charges and put then on Subcommittee letterhead to make them look like Subcommittee charges.

e. Without any proper authority from the committee, she, herself, "certified" her charges as Subcommittee charges, but the Subcommittee members had not even seen them.

f. Later, she prepared a misleading affidavit for the State Supreme Court justices that deceived them, influencing their decision to let the law license revocation stand.

g. There has been no prior litigation with Appellant attorney and this bar counsel as

parties.

h. The subject claims against her do not question, challenge, or seek to change any state court or body decision or action.

None of the relief requested – money damages for civil rights violations --would change in any way any state decision or action. They will remain exactly as before.

See Amended Complaint paras. 3, 5, 6, 25-45, and 97-104, in Appendix starting at p. 50.

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a. Bar counsel knew that proper charges of attorney misconduct for Disciplinary Board review and action had to come from the jurisdiction-giving Bar Subcommittee.
b. Bar counsel wrote up her own charges of misconduct against the Appellant attorney.
c. Without the Subcommittee acting on them, she sent them to the Disciplinary Board as coming from the Subcommittee.

d. Without any written authorization, she forged the name of the Subcommittee chairman on her charges and put then on Subcommittee letterhead to make them look like Subcommittee charges.

e. Without any proper authority from the committee, she, herself, "certified" her charges as Subcommittee charges, but the Subcommittee members had not even seen them.

f. Later, she prepared a misleading affidavit for the State Supreme Court justices that deceived them, influencing their decision to let the law license revocation stand.

g. There has been no prior litigation with Appellant attorney and this bar counsel as parties.

h. The subject claims against her do not question, challenge, or seek to change any state court or body decision or action.

i. None of the relief requested – money damages for civil rights violations --would change in any way any state decision or action. They will remain exactly as before.

See Amended Complaint paras. 3, 5, 6, 25-45, and 97-104, in Appendix, starting at p. 50.

Certainly, a U.S. District Court cannot reverse the revocation of attorney Konan's law license, but it can grant all or some of the relief requested in the Amended Complaint: "compensation for lost income," "expenses in dealing with Bar Counsel's improper 'charges'," money damages, and "attorney fees." That is the meaning of 42 U.S.C. Sec. 1983.

Once the errors of the Fourth Circuit (looking at the wrong complaint and applying law that does not fit) are corrected, attorney Konan's claims can be correctly considered on their merits. Then, at least some of the well-documented injustices might be righted or remedied.

CONCLUSION

This Petition for Certiorari should be granted, so this case can be remanded in order that:

a. The Fourth Circuit can consider the correct Amended Complaint, not the terminated one which it reviewed.
b. The parties can address what the Fourth Circuit ruled *sua sponte* was the decisive issue, Rooker-Feldman, but which the parties had not addressed below or in the Circuit Court of Appeals.
c. The error in application of the Rooker-Feldman Doctrine to summarily dismiss all claims against all defendants can be corrected, so the merits of the individual claims will control.
d. Appellant attorney can have his day in court and a fair chance to make his claims, needed for due process and for equal protection of law.

The Rooker-Feldman Doctrine does not deprive the U.S. District Court of jurisdiction over these

kinds of claims. Oviously, confusion continues. Let it be clarified now for all time with crystal clarity.

Accordingly, this case should be remanded for further proceedings as may be appropriate.

This Petition for Writ of Certiorari should be granted.

Respectfully requested,

Raymond W. Konan, pro se
438 Lexingdale Drive
Orlando, FL 32828
Tel. 571-331-9700

I. APPENDIX

Complaint, Opinions, and Orders

8. Judgment dated July 6, 2007, of Fourth Circuit of Appeals, affirming dismissal of petitioner Konan's claims against all defendants, citing the Rooker-Feldman Doctrine, ruling there was no jurisdiction in the U.S. District Court. (Mistakenly shows Justices of Virginia Supreme Court as defendants. They were not.) p. 25.

9. U.S. District Court Order of September 14, 2006, grant ing dismissal of Konan's equal protection claims, but denying dismissal of his claims of due process violations by the five defendants. p. 30.

10. U.S. District Court Memorandum Opinion, Sept. 14, 2006, explaining partial dismissal of Konan's claims. p. 31.

11. U.S. District Court Memorandum Opinion of November 7, 2006, dismissing due process violations claims against the five individual defendants on a rationale of equitable estoppel. p. 38.

12. Fourth Circuit's Denial of Petition for Rehearing, dated Sept. 7, 2007. (Mistakenly shows Justices of Virginia Supreme Court as defendants. They were not.) p. 45.

13. Amended Complaint of June 20, 2006, claiming five individuals acting under color of state law violated attorney Konan's U.S. Constitutional rights to due

process of law and equal protection of law, and claiming compensation, under 42 USC 1983. p. 50.

14. Opinion of February 13, 2004, of Virginia Supreme Court upholding the law license revocation of the Virginia State Bar Disciplinary Board (cited as basis for an equitable estoppel dismissal of all due process claims by the U.S. District Court). p.83.

Fourteenth Amendment to U.S. Constitution, p.47.

Federal Statutes

United States Code, Title 42, Sec. 1983, p. 47.

United States Code, Title 28, Sec. 1254, p. 48.

United States Code, Title 28, Sec. 1331, p. 47.

United States Code, Title 28, Sec. 1343, p. 48.

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No: 06-2308, 1:06-cv-00175-JCC
Filed: July 6, 2007

Raymond W. Konan

Plaintiff – Appellant

v.

Noel D. Sengel, Bar Counsel, Virginia State Bar; Stephen H. Ratliff, Chair-Designate District Subcommittee, Virginia State Bar; Karen A. Gould, Chairperson, Disciplinary Board Virginia State Bar; Barbara Sayers Lanier, Clerk of Disciplinary System, Virginia State Bar; Stephen M. Hall, Assistant Attorney General, Commonwealth of Virginia

Defendants – Appellees

and

Elizabeth B. Lacy; Leroy Roundtree Hassell; Barbara Milano Keenan; Lawrence L. Koontz, Jr.; Donald Lemons; G. Steven Agee; Cynthia D. Kinser, Justices Of Supreme Court of Virginia

Defendants

Appeal from the United States District Court for the Eastern District of Virginia at Alexandria

In accordance with the written opinion of this Court filed this day, the Court affirms as modified the judgment of the District Court.

A certified copy of this judgment will be provided to the District Court upon issuance of the mandate. The judgment will take effect upon issuance of the mandate.

/s/ Patricia S. Connor
CLERK

UNPUBLISHED

UNTIED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT NO: 06-2308

Raymond W. Konan,

Plaintiff – Appellant

versus

Noel D. Sengel, Bar Counsel, Virginia State Bar; Stephen H. Ratliff, Chair-Designate District Subcommittee, Virginia State Bar; Karen A. Gould, Chairperson, Disciplinary Board Virginia State Bar; Barbara Sayers Lanier, Clerk of Disciplinary System, Virginia State Bar; Stephen M. Hall, Assistant Attorney General, Commonwealth of Virginia

Defendants – Appellees

And

Elizabeth B. Lacy; Leroy Roundtree Hassell; Barbara Milano Keenan; Lawrence L. Koontz, Jr.; Donald Lemons; G. Steven agree; Cynthia D. Kinser, Justices Of Supreme Court of Virginia

Defendants

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, Senior District Judge. (1:06-cv-00175-JCC)

Submitted: April 18, 2007 Decided: July 6, 2007

Before WILKINSON, GREGORY, and SHEDD, CIRCUIT JUDGES.

Affirmed as modified by unpublished per curiam opinion.

Raymond W. Konan, Appellant Pro Se. Mike F. Melis, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Raymond W. Konan appeals from the district court's order dismissing his 42 U.S.C 1983 (2000) complaint. The district court dismissed Konan's complaint on the grounds that Konan failed to adequately state a claim for violation of the Equal Protection clause and that his Due Process claim was barred by collateral estoppel. After having reviewed the record, we find that, pursuant to the Rooker-

Feldman doctrine, the district court did not have subject matter jurisdiction over Konan's claims.

Konan's claims seek redress for injuries caused by his disbarment by the Virginia State Bar Disciplinary Board, an administrative agency of the Supreme Court of Virginia. See Va. Code Ann. 54.1-3910 (Michie 2005). While the Disciplinary Board is not itself a state court, the form of the proceeding is not determinative under Rooker-Feldman; rather, it is the nature, character, and effect of the proceedings themselves that is controlling. Feldman, 460 U. S. at 482. In Feldman, the Supreme Court took note of the judicial nature of state bar disciplinary proceedings. Id. at 482 n. 15 (citing Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423 (1982)).

See District of Columbia Court of Appeals v. Feldman, 460 U. S. 462 (1983); Rooker v. Feldman Trust Co., 263 U.S. 413 (1923). The Rooker Feldman doctrine is confined to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobile Corp. v. Saudi Basic Indus. Corp.* 544 U. S. 280, 284 (2005); see also *Davani v. Virginia Dep't of Transp.* 434 F.3d 712, 718 (4th Cir. 2006).

Additionally, this court has held that the disciplinary board of a state bar can be considered as part of the "system of state courts" and that their judicial decisions are not subject to review by the federal courts. See Allstate Ins. Co. v. West Virginia State Bar, 233 F. 3d 813, 817-18 (4th Cir. 2000) (holding Rooker-Feldman doctrine deprived district court of jurisdiction to review decision of West Virginia State Bar).

The Virginia State Bar is, by statue, an arm of the Supreme Court of Virginia, and its decisions are judicial in nature. See Allstate, 233 F. 3d at 817; see also Supreme Court of Virginia Rule Pt. 6, Sec. IV, para. 13 (procedure for disciplining and disbarring attorneys). In this case, while Konan challenges the procedures of the Bar's Disciplinary Board, the decision by the Board was upheld by the Supreme Court of Virginia, the appropriate court to review such challenges. Because the Board's function is judicial in nature, we hold that its rulings are subject to the Rooker- Feldman Doctrine and, therefore, not reviewable by a federal district court. Accordingly, we modify the district court's dismissal to show that the case was dismissed for lack of jurisdiction and affirm the dismissal as modified. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED AS MODIFIED

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division
Filed September 14 2006

Raymond W. Konan,
Plaintiff

v.

Noel D. Sengel, ESQ,
Stephen H. Ratliff, ESQ,
Karen A. Gould, ESQ,
Barbara M. Hall, ESQ,
Defendants

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is hereby ordered that:

(1) Defendants' Motion to Dismiss alleged violation of equal protection is GRANTED;
(2) Defendants' Motion to Dismiss alleged violation of due process is hereby DENIED;
(3) Defendants shall file an Answer within ten (10) days of the entry of this Order; and
(4) The clerk of the court shall forward copies of this order to all counsel of record.

September 14th, 2006 ___/ s / Judge Cacheris_____
Alexandria, Virginia U.S. DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THIS EASTERN DISTRICT OF VIRGINIA Alexandria Division
Filed September 14, 2006

Raymond W. Konan,
Plaintiff

v.

Noel D. Sengel, ESQ,
Stephen H. Ratliff, ESQ,
Karen A. Gould, ESQ,
Barbara Sayers Lanier,
Stephen M. Hall, ESQ,
Defendants

MEMORANDUM OPINION

This matter comes before the Court on Defendants' Motion to Dismiss. For the following reasons, the Court will grant Defendants' Motion to Dismiss with regard to the equal protection claims, and deny Defendants' Motions to Dismiss with regard to the due process claims. Furthermore, the defenses of collateral estoppel and qualified immunity are not available.

I. Background

Plaintiff, Raymond W. Konan, has brought this action against Defendants, Noel D. Sengel, Esq., Stephen H. Ratliff, Esq., Karen A. Gould, esq., Barbara Sayers Lanier, and Stephen M. Hall, Esq., alleging the taking of property and liberty in violation of Due Process and Equal Protection clauses of the Fourteenth Amendment of the United States Constitution. The action arises from the revocation of Plaintiff's state license to practice law and the

subsequent proceedings resulting in disbarment. Plaintiff brought an action against the defendants in their individual capacities.

The factual basis for this action, as alleged by Konan, is as follows: Plaintiff was a licensed member of the Virginia State Bar, and his license was revoked upon action by the Virginia State Bar, and his license was revoked upon action by the Virginia State Bar Disciplinary Board on June 27, 2003. Defendants Sengel, Ratliff, Lanier, and Hall were agents or employees of the Virginia State Bar during the proceedings against Plaintiff. Ms. Sengel, a Senior Bar Counsel in the Alexandria, VA office of the Virginia State Bar ("VSB"), drafted the initial charges against Plaintiff based on complaints by counsel involved in litigation with Konan. Based on these charges, disciplinary proceedings were intitited against Konan. During and prior to these proceedings, Sengel falsified signatures and certifications, acted without committee deliberation, and withheld exculpatory evidence from Mr. Konan in bad faith. Sengel has recently acted to obstruct Plaintiff's readmission to the Virginia Bar.

Plaintiff alleges that Defendant Ratliff, an attorney who served as chair of a VSB subcommittee tasked with certifying disciplinary charges, failed to deliberate with his committee as required and allowed Ms. Sengel to deliberate with his committee as required and allowed Ms. Sengel to forge his name. Plaintiff further alleges that Defendant Lanier opened a misconduct file without the necessary charges and certification, and assisted Sengel. Plaintiff also alleged that defendant Karen Gould signed an order of revocation without a full and independent evaluation of the evidence, or a majority vote of the Board, and issued defamatory statements against Plaintiff.

Plaintiff appealed the revocation of his license to the Supreme Court of Virginia, which held a hearing on the

Matter January 14, 2004. Plaintiff alleges that during this hearing, Defendant Hall, who represented the VSB, withheld exculpatory evidence from both Plaintiff and the Virginia Supreme Court in bad faith, and provided inadmissible hearsay testimony.

In the Amended Complaint, Plaintiff alleged due process and equal protection violations against each defendant, individually. Defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12 (b) (6). This motion is currently before the Court.

II. Standard of Review

A rule 12 (b) (6) motion to dismiss tests the legal sufficiency of the complaint (See *Randall v. United States*, 30 F. 3d 518, 522 (4th Cir. 1994)), and should be denied unless " it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *De Sole v. United States*, 947 F. 2d 1169, 1177 (4th Cir. 1991) (citations omitted); see also *Conley v. Gibson*, 355 U. S. 41, 45-46 (1957).

In ruling on a motion to dismiss, "the material allegations of the complaint are taken as admitted." *Jenkins v. McKeithen*, 395 U. S. 411, 421, (1969) (citations omitted). Moreover, "the complaint is to be liberally construed in favor of plaintiff." *Id.* In addition, a motion to dismiss must be assessed in light of rule 8's liberal pleading standards, which require only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8.

III. Analysis

Plaintiff has alleged no facts, which if proven true, would support an equal protection claim. A claim under

the Equal Protection Clause requires a demonstration by the plaintiff that as a result of intentional and purposeful discrimination, he has been treated differently than others similarly situated. *Morrison v. Garraghty*, 239 F. 3d 648, 654 (4th Cir. 2001); *Waters v. Bass,* 304 F. Supp. 2d 802, 819 (E.D. Va. 2004). Plaintiff has alleged no facts showing discrimination or treatment that is different from others who are similarly situated. Plaintiff has offered only conclusory statements that equal protection was violated, or irrelevant facts that allege a degree of malice, but fail to show discrimination. For the reasons stated, Plaintiff has failed to state an equal protection claim for which relief can be granted, and the defendants' motion will be granted with respect to this claim.

B. Plaintiff's Alleged Violations of Due Process

Plaintiff has properly alleged facts, which if proven true, could result in relief for violation of due process violation. The Constitution dictates that no individual shall be deprived of liberty or property without due process of law. U.S. Const. Amend. XIV. Three factors are considered to determine if due process has been afforded to an individual: 1) the private interests affected; 2) the risk of erroneous deprivation through the procedures used; and 3) probable value of additional or substitute procedures. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). In using these factors to determine whether a procedural due process violation occurred, courts must consult the "entire panoply of predeprivation and postdeprivation provided by the state." Tri-County Paving, Inc. v. Ashe County, 281 F. 3d 430, 436 (4th Cir. 2002).

Plaintiff was deprived of a property interest in his license to practice law, and a liberty interest in his ability to pursue his chosen profession. *Board of Regents v. Roth*,

408 U.S. 564, 572 (1972). Defendants argue that nonetheless, due process was provided because notice was given, hearings were held in which Plaintiff participated, and an appeal was granted prior to the deprivation of his license.

However, Plaintiff has alleged forgeries of procedural documents, failure of committees to follow mandated procedures, withholding and concealment of exculpatory evidence, and obstruction of readmission. Plaintiff also alleges a number of procedural violations violative of VSB rules of procedure. These facts, if proven true, may show significant deficiencies in the procedures used as well as erroneous deprivation amounting to a due process violation.

As the defendants argue, if the state grants more procedural rights than the Constitutions would other wise require, the violations of state promulgated rules themselves do not necessarily amount to constitutional violations. *Riccio v. County of Fairfax, Virginia*, 907 F. 2d 1459, 1466 (4th Cir. 1990). However, whether the violation of a state promulgated rule amounts to a constitutional violation is a question of fact, *fn 1*, and nothing in *Riccio* suggests that the state and constitutional due process rules are mutually exclusive. Furthermore, Plaintiff has pled a number of allegations in addition to violations of state promulgated procedural rules which, if proven true, could amount to a violation of due process. Therefore, Defendants' motion to dismiss will be denied with respect to the due process claims.

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1. The issue on appeal *in Riccio* was a summary judgment ruling on the due process issue, not a motion to dismiss for failure to state a claim. The court found that, based on the facts presented, Riccio had been given sufficient notice and procedural due process to satisfy the United States Consittution. The Court held that "(a)lleged violations of due process . . . are to be measured against a federal standard of what process is due, even when those state-created

procedures exceed the process otherwise guaranteed by the Constitution." *Id.* At 1469.

C. Qualified Immunity

Defendants are not entitled to a dismissal pursuant to Fed. R. 12 (b) (6) based on qualified immunity. Government officials are not entitled to the defense of qualified immunity if: (1) the allegations underlying the claim, if true, substantiate the violation of a federal statutory or constitutional right; and (2) this violation was of a "clearly established" right " of which a reasonable person would have known." See *Mellen v. Bunting*, 327 F. 3d 355, 365 (4th Cir. 2003) (citing Hope v. Pelzer, 536 U. S. 730, 736). As stated previously, Plaintiff has alleged facts that could amount to a violation of due process, a clearly established constitutional right. For this reason, courts have denied qualified immunity with respect to allegations of withholding exculpatory evidence (see Manning v. Miller, 355 F. 3d 1028, 1032-33 (7the Cir. 2004)), as well as allegations of improperly preparing charges and misconduct (see *Kalina v. Fletcher*, 522 U.S. 118, 122-25 (1997)), all of which Plaintiff has alleged in this case. Consequently, Defendants' motion should be denied with respect to this defense.

IV. Collateral Estoppel

Plaintiff's claims are not barred by collateral estoppel, because the constitutional issues in questions have not been litigated by the parties in a prior proceeding. Prior proceedings have only addressed the disbarment appeal to the Virginia Supreme Court, and the Parties to those proceedings were Plaintiff and the Virginia State Bar,

not the named defendants. Therefore, the defendants' motion that claims are barred by collateral estoppel will be denied.

V. Conclusion

For the foregoing reasons, Defendants' motion will be granted with respect to the alleged violation of equal protection, and denied in respect to the alleged violations of due process. Furthermore, the defenses of collateral estoppel and qualified immunity are not available. An appropriate order will issue.

September 14, 2006
Alexandria, Virginia ____/s/____Judge Cacheris_____
U.S. DISTRICT COURT JUDGE

In The

United States District Court for the Eastern District of Virginia

Alexandria Division

Filed November 7 2006

Raymond W. Konan,
Plaintiff

v. 1:06cv175 (JCC)

Noel D. Sengel, ESQ,
Stephen H. Ratliff, ESQ,
Karen A. Gould, ESQ,
Barbara Sayers Lanier,
Stephen M. Hall, ESQ,
Defendants

MEMORANDUM OPINION

This matter comes before the Court of Defendants' motion to reconsider in light of the Supreme Court of Virginia's February 13, 2004 Order, now presented to the court. For the following reasons, the Court will grant Defendants' motion, and upon reconsideration will grant Defendants' motion to dismiss.

I. Background

Plaintiff, Raymond W. Konan, has brought this action against Defendants, Noel D. Sengel, Esq., Stephen h. Ratliff, Esq., Karen A. Gould, Esq., Barbara Sayers Lanier, and Stephen M. Hall, Esq., alleging the taking of property and liberty in violation of due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution. The action arises from the revocation of

Plaintiff's state license to practice law and the subsequent proceedings resulting in disbarment. Plaintiff brought an action against Defendants in their individual capacities.

The factual basis for this action, as alleged by Konan, is as follows: Plaintiff was a licensed member of the Virginia State Bar, and his license was revoked by action of the Virginia State Bar Disciplinary Board on June 27, 2003. Defendants Sengel, Ratliff, Lanier, and Hall were agents or employees of the Virginia State Bar during the proceedings against Plaintiff. Ms. Sengel, a Senior Bar Counsel in the Alexandria office of the Virginia State Bar ("VSB"), drafted the initial charges against Plaintiff based on complaints by counsel involved in litigation with Konan. Based on these charges, disciplinary proceedings were initiated against Konan. During and prior to these proceedings, Plaintiff alleges that Sengel falsified signatures and certifications, acted without committee deliberation, and withheld exculpatory evidence from Mr. Konan in bad faith. Plaintiff further alleges that Sengel recently acted to obstruct Plaintiff's re-admission to the Virginia Bar.

Plaintiff alleges that Defendant Ratliff, an attorney who served as chair of a VSB subcommittee tasked with certifying disciplinary charges, failed to deliberate with his committee as required and allowed Ms. Sengel to forge his name. Plaintiff further alleges that Defendant Lanier opened a misconduct file without the necessary charges and certification, and assisted Sengel. Plaintiff also alleged that Defendant Karen Gould signed an order of revocation without a full and independent evaluation of the evidence or a majority vote of the Board, and issued defamatory statements against Plaintiff.

Plaintiff appealed the revocation of his license to the Supreme Court of Virginia, which held a hearing on the matter January 14, 2004. Plaintiff alleges that during this hearing, , Defendant Hall, who represented the VSB,

withheld exculpatory evidence from both Plaintiff and the Virginia Supreme Court in bad faith, and provided inadmissible hearsay testimony.

In the Amended Complaint, Plaintiff alleged due process and equal protection violations against each defendant, individually. Defendants filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), but did not include the Supreme Court of Virginia's February 14, 2004 Order ("SCV Order") for the court's consideration. On September 16, 2006, this Court granted Defendants' motion with respect to Plaintiff's equal protection claims, but denied the motion with respect to the due process claims. On September 28, 2006, Defendants filed a motion to reconsider, and submitted the SCV Order to the Court for consideration. Defendants now ask the Court to reconsider its prior ruling on the motion to dismiss Plaintiff's due process claims in light of the Order. This motion is currently before the Court.

II. Standard of Review

Rule 60(b) allows a Court to modify an order on grounds of mistake, inadvertence, excusable neglect, or for any other reason justifying relief. Fed. R. Civ. P. 60(b). The decision to grant relief under Rule 60(b) is within the sound discretion of the trial court. *Transportation, Inc. v. Mayflower Services, Inc.*, 769 F. 2d 952, 954 (4th Cir. 1994).

A Rule 12 (b) (6) motion to dismiss tests the legal sufficiency of the complaint (See *Randall v. United States*, 30 F.3d 518, 522 (4th Cir. 1994)), and should be denied unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *De Sole v. United States*, 947 F. 2d 1169, 1177 (4th Cir. 1991) (citations omitted); see also *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

In ruling on a motion to dismiss, "the material

allegations of the complaint are taken as admitted." *Jenkins v. McKeithen*, 395 U.S. 441,421 (1969) (citations omitted). Moreover, " the complaint is to be liberally construed in favor of plaintiff." Id. In addition, a motion to dismiss must be assessed in light of Rule 8's liberal pleading standards, which require only " a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8.

III. Analysis

In the September 16, 2006 Memorandum opinion, this Court declined to dismiss Plaintiff's due process claim, because Plaintiff had alleged facts amounting to a due process violation, fn 1,

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1. Plaintiff alleged forgeries of procedural documents, failure of committees to follow mandated procedures, withholding and concealment of exculpatory evidence, and obstruction of readmission, along with a number of procedural violations and alleged deprivations in the procedures.

and Defendants failed to show "by a preponderance of the evidence that the claim or issue should be precluded by the prior judgment." See *e.g., Bates v. Devers*, 202 S.E. 2d 917, 921,(Va. 1947). Because Defendants did not provide the SCV Order for consideration, this Court concluded that Defendants had not met their burden in establishing that the same issues had been litigated by identical parties or those in privity. Because the factual allegations were not collaterally esstopped, this Court declined to dismiss the Complaint, which pled a number of issues that could amount to a violation of due process if proven true. See September 14, 2006 Memorandum Opinion at 3.

Defendants now submit the Supreme Court of Virginia's Order for this Court's consideration to avoid the re-litigation of issues already decided and affirmed by the Supreme Court of Virginia. Defendants further raise the public policy concerns of granting disbarred attorneys a federal forum to collaterally attack final state court rulings.

When a plaintiff fails to introduce a pertinent document as part of his complaint, defendants may attach the document to a motion to dismiss and the Court may consider that document under Rule 12 of the Federal Rules of Civil Procedure without converting the motion to one for summary judgment. *Gasner v. County of Dinwiddie*, 162 F.R.D 280, 282 (E.D. Va. 1995). While Defendants should have provided this order to the Court prior to the September Memorandum Opinion, this Court is nonetheless compelled to examine it now in order to avoid permitting the re-litigation of issues that have already been decided and affirmed. Upon review of the SCV Order, this Court finds sufficient grounds to reconsider its prior rulings on collateral estoppel and qualified immunity.

A. Final Judgment of Factual Allegations Comprising Plaintiff's Due Process Claim was Rendered in the SCV Order

Collateral estoppel precludes parties or their privies from a prior action from re-litigating any issues of fact decided and essential to final and valid judgment in the prior action. *Bates v. Dever*, 202 S.E. 2d 917, 921 (Va. 1974). Privity generally involves a party "so identical in interest with another that he represents the same legal right." *Nero v. Ferris*, 284 S.E.2d 828, 831 (Va. 1981). As noted, the burden of persuasion is on the movant for collateral estoppel to show "by a preponderance of the evidence that the claim or issue should be precluded by the

prior judgment." *Id.* at 921.

Review of the SCV Order reveals that the factual allegations comprising Plaintiff's due process claim were address by the Supreme Court of Virginia which found them essential to final judgment. The SCV Order specifically addressed Plaintiff's allegations of forgery and lack of jurisdiction. First, the Supreme Court considered and found merit to the various charges against Plaintiff initiated by Ms. Sengel on behalf of the VSB. (Def.'s Mot. Ex. A at 4-6). Second, the Supreme Court found no error regarding the signature and certification of charges, holding that "the certification from the District Committee substantially complied with the procedures set forth in the Rules and vested the Board with jurisdiction." (Def.'s Mot. Ex. A at 4). Third, the Supreme Court found no problem with the specificity of the charges, holding that the Board was justified in hearing the charges, and Ms. Sengel followed appropriate procedures in prosecuting them. (Def. 's Mot. Ex. A at 2-5). Finally the Supreme Court affirmed the prior ruling, holding that clear and convincing evidence on the record supported plaintiff's disbarment, and that no procedural violations occurred. (Def.'s Mot. Ex. A. at 2-3). Defendants motion for reconsideration and the SCV order both solidify the argument for privity between the parties and the Commonwealth as well. Each party named to the suit was an agent of the Commonwealth during the proceedings against Plaintiff, and none were found to be acting outside their scope of authority.

B. DUE PROCESS CLAIMS

Review of the SCV Order dispels any allegations that Plaintiff was not afforded due process of law. The Due Process Clause requires that no citizen shall be deprived of a right without notice and opportunity to be heard.

Cleveland Board of Education v. Loundermill, 470 U. S. 532, 546 (1946). Plaintiff Konan was given notice and opportunity to be heard on more than one occasion. The SCV Order establishes firmly that the Supreme Court conducted a review of the entire record prior to issuing its ruling, and that this was the final review in a series of hearings on Plaintiff's disbarment. (Def. "s Mot. Ex. A at 5). Furthermore, the factual allegations that would comprise a due process claim mentioned above were previously litigated and finally decided by the Supreme Court of Virginia. As the SCV
Order makes clear, Plaintiff was given notice and opportunity to be heard, and no errors or flaws were found in the underlying proceedings. Accordingly Plaintiff's due process claims against Noel Sengel (Count I), Stephen Raliff (Count II), Barbara Lanier (Count III), Karen Gould (Count IV), and Stephen Hall (Count IV) will be dismissed.

IV. Conclusion

For the foregoing reasons, Defendants' motions to reconsider will be granted, and upon reconsideration Defendant's motion to dismiss will be granted. An appropriate order will issue.

November 7, 2006
Alexandria, Virginia /s/ Judge Cacheris
U.S. DISTRICT COURT JUDGE

Case: 06-2308 Document: 35 Date filed 09/07/2007

United States Court of Appeals
for the Fourth Circuit

Raymond W. Konan,

Plaintiff – Appellant

Versus

Noel D. Sengel, Bar Counsel, Virginia State Bar; Stephen H. Ratliff, Chair-Designate District Subcommittee, Virginia State Bar; Karen A. Gould, Chairperson, Disciplinary Board Virginia State Bar; Barbara Sayers Lanier, Clerk of Disciplinary System, Virginia State Bar; Stephen M. Hall, Assistant Attorney General, Commonwealth of Virginia

Defendants – Appellees

and

Elizabeth B. Lacy; Leroy Roundtree Hassell; Barbara Milano Keenan; Lawrence L. Koontz, Jr.; Donald Lemons; G. Steven agree; Cynthia D. Kinser, Justices Of Supreme Court of Virginia

Defendants

On petition for Rehearing and Rehearing En Banc

The appellant's petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for

rehearing en banc, and as the panel considered the petition for rehearing and is of the opinion that it should be denied,

It is ordered that the petition for rehearing and rehearing en banc is denied.

Entered for a panel composed of Judge Wilkinson, Judge Gregory, and Judge Shedd.

For the Court,
/s/ Patricia S. Connor
Clerk

Sept. 7, 2007

MANDATE

The judgment of this Court, entered 7/6/07, takes effect this date. A certified copy of this Court's judgment and a copy of its decision are issued to the district court and constitute the mandate of this court.

/s/ Patricia S Connor
CLERK

14th Amendment to U.S. Constitution

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. 1983. Civil action for deprivation of rights

Every person who, under color of any statue, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statue of the District of Columbia.

28 U.S.C. 1331. Federal question

The district courts shall have original jurisdiction of all civil actions under the Constitution, laws, or treaties of the United States.

28 U.S.C. 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.S.C. 1343. Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs

mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, oridance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section –

(1) the District of Columbia shall be considered to be a State; and
(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statue of the District of Columbia.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Raymond W. Konan
438 Lexingdale Drive
Orlando, Fl 32828

Plaintiff,

v.

Noel D. Sengel, Esq
Bar Counsel, Virginia State Bar (VSB)
100 N. Pitt Street, #310
Alexandria, VA 22314-3133

Stephen H. Ratliff, Esq.
"Chair-Designate"
District Subcommittee
Virginia State Bar (VSB)
10511 Judicial Drive
Fairfax, VA 22030-5172

Karen A. Gould, Esq.
Chaiperson, Disciplinary Board
McSweeney, Crump Lawfirm
P.O. Box 1463
Richmond, VA 23218
Barbara Sayers Lanier
Clerk of Disciplinary System
Virginia State Bar
50

707 East Main Street, #1500
Richmond, BA 23219-2800

Stephen M. Hall, Esq.
Assistant Attorney General
Commonwealth of Virginia
900 E. Main Street
Richmond, VA 232219

AMENDED COMPLAINT FOR VIOLATIONS OF U.S CONSTITUTIONAL RIGHTS

Re: REVOKED LAW LICENSE

June 20, 2006

COMPLAINT

Plaintiff complains that the Defendants have taken and withhold the property of his Virginia law license through actions, enter color of state law, but contrary to their official duties and beyond Virginia law, in selective discrimination, based on mistakes of fact and errors of law, resulting in violations of Due Process and Equal Protection of Law guaranteed by the United States Constitution. In publications, Defendants wrongly claim dishonesty, bad character, and Plaintiff's inability and ineligibility to practice law. Now, in failing to recognize and correct their wrongful actions, done without jurisdiction, commenced and concluded in deception, Defendants are preventing Plaintiff attorney from being reinstated in the Virginia Bar. Plaintiff seeks compensation and corrective actions pursuant to his rights under 42 U.S.C. 1983 and the United States Constitution.

JURISDICTION

1. This court has jurisdiction over this claim of unconstitutional actions under color of state law depriving Plaintiff attorney of his property in his law license, causing revocation of other bar memberships denying Plaintiff attorney the liberty to practice his chosen profession--law. 42 U.S.C. 1983, 28 U.S.C. 1331, and 28 U.S.C. 1343. This case presents issues of both federal law (42 USC 1983) and the U.S. Constitution, namely Due Process and Equal Protection of Law as guaranteed in the Fourteenth Amendment.
2. The United States Supreme Court has ruled that admission to a state bar " is justiciable" per U.S. Constitution, Article III Sec. 2.
3. The Virginia Supreme Court, hampered by deception at the beginning and at the end of disciplinary proceedings in Virginia, failed to grant any remedy on the narrower issue of invalid law license revocation that Plaintiff brought there with only the Virginia State Bar as the defendant, and before the full facts of deception were revealed.
4. The United States Supreme Court did not have time to review that narrower state court issue so it did not grant a petition for certiorari. There has been no court review for remedies provided by 42 U.S.C. 1983 for violations of Due Process and Equal Protection. This U.S. Court's jurisdiction has recently been clarified and affirmed by the United States Supreme Court's and our Fourth Circuit Court of Appeals in *Davani v. Virginia Dept. of Transportation,* 434 F. 3d 712 (4th Cir, 2006) decided on January 17, 2006, applying the decisions in *Exxon Mobile Corp. et al v. Saudi Basic Industries*

Corp, No. 03-1696, 544 U.S ____(2005), and *Lance, et al. v. Dennis*, No. 05-555, decided February 21, 2006.

5. This is the first action against any of the named individual Defendants, all sued in their individual capacities for acting outside of their jurisdiction, duties, and authority, violating Plaintiff's property interest in his law license, violating the fundamental liberty to practice one's profession, while defaming Plaintiff with falsehoods, ruining his good name, and destroying scores of client contracts for legal representation, and still refusing to correct their wrongful actions.
6. The U.S. Constitutional issues raised among the parties in this action have not been addressed or decided by any other court, not with respect to these parties, or any other party. This will be the first judicial review of the alleged United States Constitutional violations of these Defendants. This is the first adjudication of these claims for relief.

PARTIES

7. Plaintiff Raymond W. Konan is an attorney, whose license to practice law in Virginia (Bar License No. 38366) was revoked by the Virginia State Bar (VSB) Disciplinary Board on June 27, 2003. He claims remedies under 42 U.S.C. 1983.
8. Defendant Noel Sengel is a Senior Bar Counsel in the Alexandria, Virginia, Office of the Virginia State Bar (VSB). She drafted charges against Plaintiff attorney Konan, based on allegations of two opposing counsel who were representing reputed foreign criminals who sued Plaintiff Konan's newspaper clients, and then Ms. Sengel certified those charges as charges of a VSB subcommittee. She prosecuted those charges in the VSB Disciplinary Hearing that resulted, seeking, and

obtaining a revocation of Plaintiff's license to practice law in Virginia.

9. Defendant Stephen H. Ratliff is an attorney in Fairfax, Virginia, who apparently served as chair of a Virginia State Bar (VSB) subcommittee that had the authority to make and certify charges of misconduct for hearings in the VSB Disciplinary Board. He reportedly gave an "okay' to Bar Counsel Sengel to sign his name on the charges she drafted and certified as VSB subcommittee action.
10. Defendant Barbara Sayers Lanier is the clerk of the Virginia State Bar (VSB) Disciplinary System. She opened the disciplinary case on the charges from Bar Counsel, she arranged for the hearing of the Disciplinary Board that revoked Plaintiff's law license, and directed the publication of a Memorandum Order of law license revocation that attacks Plaintiff's honesty and fitness to practice law.
11. Defendant Karen A. Gould is an attorney in Richmond, Virginia, who served as the chair person for the VSB Disciplinary Board that revoked Plaintiff attorney's law license of June 27, 2003. She signed a Memorandum Order of license revocation that has been widely published which attacks Plaintiff's honesty and fitness to practice law.
12. Defendant Stephen Hall is an attorney working in the office of the State Attorney General. He represented the Virginia State Bar when Plaintiff appealed his law license revocation to the Supreme Court of Virginia, and he also provided hearsay testimony at that court's hearing on January 14, 2004.
13. These parties have not been parties together in any prior litigation. These federal claims have not been litigated before in any other forum.

PARTIES IN INDIVIDUAL CAPACITY

14. The individuals named as Defendants in the style of this case are all sued in their individual capacities, although identified with their official state positions, for convenience, and to indicate that they acted under color of state law.
15. Plaintiff claims that the Defendants individually and collectively acted outside of their prescribed official duties, without jurisdiction and without authority, and they individually and collectively violated well-established U.S. Constitutional rights.

Plaintiff's Claim

16. Plaintiff Raymond W. Konan, an attorney, whose license to practice law in Virginia (Bar License No. 38366) was revoked by the Virginia State Bar Disciplinary Board on June 27, 2003, brings this complaint against the named Defendants, who all played a part of the revocation and the keeping of Plaintiff in a position of ineligibility to get his license back, or even to be eligible to reapply for admission to the Virginia State Bar—all in violation of Virginia law and violating the United State Constitution, particularly Due Process and Equal Protection of Law, as provided in the Fourteenth Amendment to the U.S. Constitution. The Defendants' individual violations of duty, state law, and the U.S. Constitution are described below.
17. Plaintiff complains that all of the Defendants are responsible for the publication of false and defamatory information about Plaintiff from the disciplinary proceedings that were started and ended with deception, conducted without jurisdiction and without

due process, denying Plaintiff equal protection of law, which publication is full of false facts and errors of law.

18. That continuing defamation by publication in paper dissemination and on the internet attacks Plaintiff's honesty, integrity, character, and fitness to practice law. It is hurting his standing in the community. It steals his good name. It greatly limits his employment, even in areas outside the practice of law. It needs to be corrected.
19. The following facts show that there has been a near total disregard for the Rules of the Virginia State Bar Disciplinary System, Virginia law, and U.S. Constitution from the bottom all the way up to the top of the Disciplinary System.
20. The revocation of his law license stopped Plaintiff from practicing law, his chosen profession, for which he spent 9 years in some of the nation's most demanding universities (University of California, Berkeley, Johns Hopkins, and Cornell) acquiring his academic credentials, and after 33 years of professional life and public service.
21. The revocation of Plaintiff's law license stopped him from earning his living by the practice of law. When Plaintiff's income dropped below what was needed to pay his two mortgages and his condo fees for his home and office, he had to sell them and relocate to a lower-cost area.
22. The revocation of Plaintiff's law license immediately ended the contracts for legal representation that Plaintiff had with scores of clients, who had chosen Plaintiff as their advocate. Some of them lost their claims and cases, because they could not find another attorney to represent them. Their fundamental rights to legal representation were harmed.

23. Plaintiff appealed to the Supreme Court of Virginia to have the revocation of law license declared invalid, but there was deception in that supreme court proceeding: First, from Bar Counsel Sengel's false certification of charges of misconduct, Second, from Assistant Attorney General Stephen Hall's brief that was full of errors of facts and law, Third, Bar Counsel Sengel's misleading affidavit of December 30, 2003, suggesting proper authorization for her charges of misconduct, and Fourth, deception from Stephen Hall of the Attorney General's Office, representing the Virginia State Bar, when he gave false hearsay testimony that there was a proper authorization for Bar Counsel to sign her charges (signing another's name) as actions of a proper VSB committee. Those descriptions misled the state justices into errors that side-tracked a narrower state remedy from state court.
24. Plaintiff claims that the actions and inactions of the Defendants show either total disregard for the law and complete incompetence, or deliberate illegal acts, in violation of Due Process and Equal Protection. Either Plaintiff was singled out for unfair and discriminatory treatment in violation of equal protection of law, or the Virginia State Bar Disciplinary System is a lawless system operated outside of the Virginia State and United States Constitutions.

WRONGS OF DEFENDANT BAR COUNSEL NOEL SENGEL

25. Defendant Bar Counsel Noel Sengel induced the Defendant VSB Disciplinary System Clerk Lanier to wrongly require Plaintiff to answer Bar Counsel's vague "charges" of attorney misconduct (VSB Docket Numbers 00-052-3465 and 01-052-0361) that did not

provide a "clear and concise" statement of charges, which the VSB Disciplinary Board Rules of Procedure expressly required.

26. Defendant Bar Counsel Sengel induced that Clerk to wrongly require Plaintiff to answer "charges" of misconduct that came from Bar Counsel, herself, when the clerk of the disciplinary system knew or should have known that Bar Counsel had no authority to make and certify charges to the Disciplinary Board, because that was beyond her duties, authority, and proper role.
27. Defendant Bar Counsel induced the Clerk to require Plaintiff to answer "charges" that did not come from the only source that could give jurisdiction to the Disciplinary Board, namely a proper district committee of the Virginia State Bar.
28. Defendant Bar Counsel made her "charges" appear to be charges from a proper jurisdiction-giving district subcommittee by putting them under the letterhead of the subcommittee, not her or her office's letterhead.
29. Defendant Bar Counsel sought to conceal the fact that the "charges" only came from her, not the proper subcommittee, by signing not her own name, but the name of the chair designate of a VSB subcommittee, "*Stephen H. Ratliff*" under the Fifth District committee name, and above the typed name "Stephen H. Ratliff."
30. Bar Counsel Sengel labeled her charges with the word "CERTIFICATION," but it was only she who prepared and signed the "CERTIFICATION" while she knew that under the applicable Rules, only the subcommittee could make or certify charges of misconduct to give the Disciplinary Board jurisdiction.
31. Bar Counsel, herself, then had her "charges" with her "certification" of them sent directly to the clerk of the disciplinary system, knowing that they were disguised to make it appear to be charges and certification from

the jurisdiction-giving VSB subcommittee, when they were not. (Subcommittee acts only in quorum.)

32. Defendant Bar Counsel knew from years of experience that a Disciplinary Board Hearing would result in the normal course from her conveyed "charges" and "certification" and it did.
33. Bar Counsel Sengel pressed forward at the Disciplinary Board Hearing and asked for the Board to revoke Plaintiff's law license, and her request was granted.
34. Bar Counsel has stated that she got an approval from one member of the subcommittee (some 14 months after a purported subcommittee meeting, for which there is no record) giving her "permission" to sign the name of the subcommittee chair designate on her "charges" and her "certifications."
35. All the while, Bar Counsel knew that the rules clearly stated that the subcommittee can act only in quorum with all three members deliberating together. She had no indication that the members had so deliberated, or so acted, on her "charges and certification." She knew or should have know that the members never deliberated on her "charges' and "certification," which they never even saw.
36. In her vague "charges" and in the VSB Disciplinary Board Hearing, Defendant Bar counsel Sengel seemed to suggest that the following were violations of law, proper procedure, or standards of conduct (but none were, in fact):

    A. Filing a lawsuit, as the client requested, stating facts as received and believed that met each requirement of each count included.
    B. Filing a motion to reconsider after a judge summarily dismissed the claims with no evidentiary hearing, and no explanation, when

the claims met legal requirements, and all alleged facts stated were to be taken as true, not untrue, for purposes of considering summary dismissal.

C. Conveying a client's confidential offer of settlement, which the courts and Virginia law encourage, that included counsel in a proposed release of liability (like the insurance company release do).

D. Conveying a confidential offer of settlement, which the opposing counsel says he deemed too high and said he felt it was "extortion," when it was only 2 per cent of what his client was claiming.

E. Filing a motion to obtain the name of a court reporter hired by opposing counsel for a trial, so the client could order a copy of the trial transcript, after opposing counsel repeatedly and improperly refused to divulge the name, when Virginia Supreme Court Rules state anyone can get a transcript.

F. Requesting attorney fees for a client who was dismissed from a case on the last work day before trial, within the 21 days time of continuing judicial authority of the matter.

G. Making a motion for permission to file an *amicus curiae*, friend of court, brief in a case of the number- one-most-wanted criminal from Russia suing Izvestia newspaper in Arlington County Court, when the defendant newspaper was unrepresented and not present, and the Supreme Court Rules and Virginia court practice welcome such friends of court.

H. Being ruled in contempt by a Circuit Court judge for not fully and very quickly paying in

less than 30 days sanctions in a judgment, when no due date was stated, and payments were being made at more than 25% per month.

I. Writing a letter to opposing counsel requesting payment on a valid and clerk-certified order of the court awarding attorney fees as the client requested, and as the judge explained were justified.

Defendant Bar Counsel used these as phony bases for law license revocation, when none of these actions of the Plaintiff can fairly be deemed violations of law, proper procedure, or standards of conduct. Defendant Bar Counsel knew or should have known that.

37. Bar Counsel Sengel also deliberately and systematically withheld exculpatory evidence that she had a duty to report to Plaintiff when requested. Instead of reporting the exculpatory information, she falsely denied knowing any. Plaintiff was prejudiced by Bar Counsel's withholding exculpatory evidence that contradicted her suggested ethical lapses by Plaintiff.
38. Bar Counsel was motivated by malice, spite, and a desire to retaliate against Plaintiff for questioning her positions and procedures in earlier controversies involving Plaintiff and her. That, more than facts and law, dominated her actions.
39. Despite her knowledge of and her creation of all of these flaws and violations of Virginia law and Plaintiff's rights, Defendant Bar Counsel requested the Disciplinary Board to revoke Plaintiff's license to practice law in Virginia, and the Board complied.
40. Defendant Sengel may have drafted or assisted in the drafting of the libelous Memorandum Order of

license revocation (dated July 10, 2003) after she knew or should have known that it reported action taken without jurisdiction, reflected errors of fact and of law, and that the license revocation was obtained without jurisdiction by her deception.

41. The Memorandum Order followed in the normal course from Bar Counsel's manipulation in the Disciplinary Board. That defamatory Memorandum Order impugned Plaintiff's honesty, morality, character, and fitness to practice law with ill-based conclusions from an unfair Hearing, without jurisdiction, and Defendant Bar Counsel knew that, or she should have known that.
42. This was the culmination of Defendant Bar Counsel's campaign of harassment directed selectively against Plaintiff, driven by spite and malice that lasted for years, and involved other ill-based accusations. Her conduct was arbitrary and capricious, callous and wanton. It shocked the conscience and is repugnant to any fair-minded member of the community.
43. It appears that no Virginia Bar Counsel before or after had sought any attorney's disbarment with such a paucity of charges of attorney wrong-doing and with so much deception. Her actions were discriminatory actions against Plaintiff.
44. Although she did all of these things under the color of her official position, they were contrary to her duties, outside her authority, and contrary to Virginia law, due process and equal protection of law. Ms. Sengel acted in disregard for law and with complete incompetence, or she deliberately violated Plaintiff's Constitutional rights.
45. Defendant Bar Counsel Sengel caused the damages from Plaintiff's loss of his law license, including lost income, public humiliation, loss of reputation,

mental anguish, attorney fees and costs in defending against her charges and seeking the federal claim remedies of this action. She is obstructing Plaintiff's readmission to the Virginia Bar.

Wrongs of Defendant VSB Subcommittee Chair Stephen Ratliff

46. Defendant VSB subcommittee chair Stephen Ratliff did not deliberate in a group of three subcommittee members on Bar Counsel's "charges" of Plaintiff attorney misconduct, or on her "certification" of her charges.
47. Neither Mr., Ratliff, nor his committee, created any official document or record that indicates that any such deliberation or any meeting ever took place.
48. At most, Defendant Ratliff may have given an oral "okay" to Bar Counsel Noel Sengel to sign his name on charges against Plaintiff that she, herself, prepared, and she, herself, signed to certify."
49. Stephen Ratliff knew, or should have known, that an oral "okay" has not sufficient for someone else to sign his name on an official document of such importance to the Bar, to Plaintiff, and to many attorney's clients who could have their contracts for legal representation abruptly terminated by the Disciplinary Board.
50. Mr. Ratliff knew that his Virginia State Bar subcommittee could take action only in a quorum, with all three members deliberating together, as per clearly stated Supreme Court and Disciplinary Rules.
51. If Mr. Ratliff did give some kind of an "okay" for Bar Counsel's charges or certification, he knew that it was without authority because he knew that his

subcommittee could only take action with all three members deliberating together and that never happened on Bar Counsel's charges and her certification of charges in this case.

52. Mr. Ratliff knew or should have known that neither he, nor his subcommittee, had the power to delegate to Bar Counsel the authority of his subcommittee to make or certify charges of attorney misconduct, because there was no such delegation authority.
53. Mr. Ratliff, as an experienced attorney, could see that Bar Counsel's prepared "charges" were vague on their face, not "clear and concise" charges that the Rules required.
54. Defendant Stephen Ratliff acted in total disregard for the law and with complete incompetence, or he knowingly joined Bar Counsel Sengel in deliberate violations of official VSB duties, the law, and Plaintiff's legal and U.S. Constitutional rights, which any reasonable person in his position would know.

Wrongs of VSB Disciplinary System Clerk Barbara Sayers Lanier

55. VSB Disciplinary System clerk Barbara Sayers Lanier opened a misconduct file on Plaintiff based on Defendant Bar Counsel Sengel's "charges" that were received directly from Bar Counsel.
56. VSB Clerk Lanier knew that she had no authority to do so, because she knew that the VSB Disciplinary Board Rules of Procedure that regulated her work did not authorize or permit it.
57. Clerk Lanier opened a misconduct file of Plaintiff without the needed charges of misconduct and certification from the subcommittee that the Rules required.

58. Clerk Lanier knew the applicable rules, but she ignored them.
59. Clerk Lanier had no record of any kind from the subcommittee, itself.
60. Clerk Lanier sent to Plaintiff the "charges" of attorney misconduct that she received from Bar Counsel Sengel, without checking to see if they were clear and concise, as clearly and expressly required by the disciplinary rules.
61. Clerk Lanier knew that only *"clear and concise"* charges were authorized by the rules, but she ignored the rules in sending Bar Counsel's vague charges to Plaintiff.
62. On the basis of the "charges" from Bar Counsel, and with nothing from the VSB subcommittee, itself, defendant Clerk Lanier proceeded to arrange for a disciplinary Hearing. She required Plaintiff to attend or be subject to a default.
63. She did those things in her role as the VSB Clerk of the Disciplinary System.
64. Plaintiff informed Clerk Lanier that there were problems with charges from Bar Counsel before the Disciplinary Board Hearing, but she sought no clarification or other correction.
65. Plaintiff explained to Clerk Lanier that there were problems with the Disciplinary Board proceedings after the Hearing, but she sought no correction or remedy.
66. Defendant Clerk Lanier proceeded to arrange or authorize the publication of the Memorandum Order of law license revocation, dated July 10, 2003.
67. Clerk Lanier knew that it criticized Plaintiff's honesty and character, and that it concluded that Plaintiff was unfit to practice law in Virginia.

68. Clerk Lanier did not check to see if the conclusions of the Disciplinary Board were supported by clear and convincing evidence in the record.
69. These facts show that either Clerk Lanier was completely incompetent and recklessly disregarding the Rules, the law, and Plaintiff's rights, or she was knowingly an accomplice to Bar Counsel Sengel's deception and wrongful acts, violating due process and equal protection. She is responsible for the damages Plaintiff has suffered and is suffering from being deprived of his law license property, his liberty to practice his profession, and his good name and reputation, all taken from him by her and others.

Wrongs of Disciplinary Board Chair Karen Gould

70. Defendant Karen Gould, acting as the Chair and spokesperson of the Virginia State Bar Disciplinary Board, commenced the Disciplinary Hearing on the charges that were prepared by Defendant Bar Counsel, without requiring that the charges be a *"clear and concise"* statement of alleged misconduct.
71. Ms. Gould knew that *"clear and concise"* charges were required by the disciplinary Rules.
72. Defendant Gould commenced a disciplinary hearing on the "charges," without requiring that they come from the VSB subcommittee was authorized to make them and to certify them for the Disciplinary Board.
73. Defendant Gould, as chair of the disciplinary Hearing, did not state a summary of the alleged misconduct, the nature and purpose of the hearing, the procedures to be followed during the hearing and the dispositions available to the board following the hearing, while knowing that the Rules required it.

74. Defendant Gould allowed the application of *res judicata* to indicate misconduct by the Plaintiff. She led or permitted the Board members to conclude that attorney misconduct had already been determined for her proceedings by others in other forums. *Res judicata* was applied to make clear and convincing evidence unneeded. She determined that a careful review of the actual evidence in support or against was not unnecessary. She and the Board refused Plaintiff's pleas to the contrary.
75. Defendant Gould, issued a brief order revoking Plaintiff's license to practice law in Virginia on June 27, 2003, at the end of the Disciplinary Hearing.
76. Before doing so, Ms. Gould did not check to be sure that the Board had jurisdiction over the matter by a proper certification of charges of misconduct from a VSB subcommittee.
77. Defendant Gould signed an order of law license revocation without a full independent evaluation of the evidence in the exhibits and arguments presented.
78. Defendant Gould unilaterally signed and issued a detailed Memorandum Order of law license revocation on July 10, 2003, without first getting a majority of the members of the Board to sign onto it, or to see it and vote on it.
79. Defendant Gould's Memorandum Order contains a number of misstatements of facts and errors of law. It was recklessly and carelessly composed.
80. Defendant Gould knew that her signed revocation Order would be publicized. She knew that her Memorandum Order would be published in print and on the internet in the normal course, as an expected result of her actions. She knew it would damage Plaintiff.

81. These facts indicate that Defendant Board Chair Gould's actions were taken with reckless disregard to applicable law and were plainly incompetent, or they were knowing violations of her VSB duties, the law, and Plaintiff's legal and U.S. Constitutional rights, which any reasonable person in her position would know.
82. Defendant Gould knew that what she wrote about Plaintiff would defame him. She knew that it would harm his reputation among his peers, his friends, and the community, because it attacked his honesty, character, and fitness to practice law, and it even included reference to criminal conduct. Her actions make her responsible for the resulting damages to Plaintiff, including loss of license, loss of income, public humiliation, loss of good standing in the community, mental anguish, and costs of and expenses of the earlier proceedings and this action for damages and remedies.

Wrongs of Defendant
Assistant Attorney General Stephen Hall

83. Defendant Assistant Attorney General Stephen Hall (AG Hall), acting as counsel to the Virginia state Bar, requested, under color of state law, that the Supreme Court of Virginia uphold the Disciplinary Board's revocation of Plaintiff's license to practice law, when he knew or should have known that many of his statements of fact and law were completely false.
84. In his VSB representation, Mr. Stephen Hall withheld exculpatory evidence from Plaintiff and from the Virginia Supreme Court.

85. Defendant AG Hall stated that the "charges" from Bar Counsel Sengel were *"clear and concise,"* when any lawyer can see that they were not. No conduct reported in the "charges" of Bar Counsel was identified as challenged or questioned as misconduct. None was identified as violating any rules of professional conduct.
86. In his Supreme Court brief, AG Hall stated repeatedly that Plaintiff went judge shopping, going to another judge to get a different result after one judge had ruled. There was no support in the record for the repeated distortion. He refused to correct it.
87. AG Hall contended that Bar Counsel Sengel's "charges" came from the VSB subcommittee in a proper way, when the record contained no support for that. The facts are opposite. They were Bar Counsel's charges, with only a Bar Counsel "certification," with Bar Counsel having signed someone else's name to them, with no power of attorney.
88. AG Hall told the Virginia Supreme Court in the oral argument of January 14, 2004, in Plaintiff's appeal, that there was always a written authorization from the VSB subcommittee for Bar Counsel to sign "charges" in their name and on behalf of the subcommittee, although the official record showed none, and no one could find any in this case. That late, hearsay report to the justices was false. That false report influenced the justices' finding of *"no error"* in the Disciplinary Board's decision. That obstructed even the narrow state remedy sought is state court.
89. AG Hall argued that the "charges" had been handled properly by the subcommittee, when the record showed that they had not acted at all on them.

90. AG Hall argued in the Virginia Supreme Court that the Disciplinary Board had followed proper procedures, when the facts and the record shoed otherwise.
91. AG Hall had sufficient information for him to know that the Disciplinary Board had proceeded without jurisdiction over Plaintiff's matters, making its ruling null and void. If he did not have it on January 14, 2004, he has that knowledge now, but there are still no corrections forthcoming from the Attorney General's Office.
92. The facts show that AG Hall's described actions were, at best, in reckless disregard for the law and plainly incompetent, or they were knowing violations of his official duties, the law, and Plaintiff's legal and Constitutional rights. Any reasonable person in his position would know that. His actions were arbitrary and capricious, callous and wanton, representing a gross abuse of power, repugnant to any reasonable member of the community.
93. Mr. Hall bears and shares the responsibility for the damages suffered by Plaintiff from his law license revocation and the related defamation in the Memorandum Order, which continues uncorrected.

Errors of Virginia Supreme Court Justices

94. Plaintiff appealed the law license revocation to the Virginia Supreme Court in 2003. In that forum, Plaintiff explained the false facts and flawed procedures of the Disciplinary Board proceedings, conducted without jurisdiction, because jurisdiction comes only from a certification of charges from a VSB district subcommittee.

95. Deceived by the misrepresentations of Defendant Bar Counsel and by Defendant Assistant Attorney General Stephen Hall, as described above, instead of correcting the license-revocation action of the Disciplinary Board, the named justices (or one of them acting in the names of all) found "no error" in the Disciplinary Board's proceedings.
96. They were led to believe, falsely, that Bar Counsel's charges and Bar Counsel's certification of her charges were proper actions of the subcommittee. Failing to see that error, the Virginia justices gave no remedy.
97. U. S. District Court review of alleged unconstitutional actions in a state bar disciplinary case may be preferable to state court action, in any case, because the state court has almost a parent-child relationship with the attorney disciplinary system it has created, and which it monitors, with obvious conflict of interest concerns.

COUNT I. DEFENDANT NOEL SENGEL'S VIOLATIONS

98. All of the above paragraphs, with special emphasis on paragraph 25-45, are incorporated in this Court I, Defendant Noel Sengle's Violations.
99. The stated facts show that Defendant Bar Counsel acted outside her duties and normal functions as Bar Counsel, usurping the role of the VSB subcommittee, without authority to do so, then proceeding to request and get plaintiff's law license revoked in a Disciplinary Board Hearing that she knew, or should have known, had no jurisdiction, had not followed its own rules, and had not provided Due Process or Equal Protection of law.

100. Her vague "charges" of attorney misconduct identified no act or omission as a violation. They were confusing to Plaintiff and to the Disciplinary Board. They did not meet legal requirements for fair notice, not the legal requirements of rules of the Disciplinary System, and not state and U.S. Constitutional requirements of Due Process and Equal Protection.
101. Practicing deception, she disguised her charges as those of a VSB subcommittee, by signing not her own name, but forging the name of the subcommittee chair.
102. She continued her deception in the Supreme Court of Virginia by providing a misleading Affidavit that suggested that she had subcommittee authorization, when she did not. She may also have been a party to the misrepresentations to the Supreme Court that were presented in writing and orally by Assistant Attorney General Stephen Hall.
103. In the Disciplinary Board Hearing she presented numerous actions of Plaintiff as improper, when they were not, which she knew or should have known.
104. With no clear and convincing evidence of any serious wrong-doing, which the Disciplinary Rules required, she dominated and manipulated the disciplinary system to deprive Plaintiff of his license, his livelihood, and his good name and reputation.
105. She singled out plaintiff for vindictive, discriminatory treatment. She then proceeded in an arbitrary and capricious manner, recklessly disregarding her duties and the law, grossly abusing her power, and violating Plaintiff's U.S. Constitutional rights to due process and equal protection. More that anyone, she is responsible and liable to Plaintiff for the damages that he suffered in lost income, costs and attorney fees, loss of standing in the community, public humiliation, mental aguish and emotional distress, and she should pay punitive

damages, as well, because her actions need to be punished, and others need to be deterred from such illegal conduct that shocks the conscience and is repugnant to any reasonable member of the community.

COUNT II. DEFENDANT STEPHEN RATLIFF'S VIOLATIONS

106. All of the above paragraphs, with special emphasis on paragraphs 46-54, are incorporated in this Count II, Defendant Stephen Ratliff's Violations. They show that Mr. Ratliff acted under color of state law, but outside of his authority and outside of the law, with respect to Bar Counsel's "charges" against Plaintiff.
107. The stated facts show that Defendant Stephen Ratliff acted in disregard for the disciplinary rules and rules of law and with complete incompetence, or he was knowingly complicit in Bar Counsel Sengel's deception about her charges and certification being the subcommittee's. That deprived Plaintiff of a Grand Jury type review of allegations before they were filed, and before Plaintiff had to answer them. A good review by the members of the subcommittee would have or could have reduced the vague insinuations of Bar Counsel's "charges" and clarified them to a clear and concise charge, to which Plaintiff was entitled.
108. A cover up by suggesting a delegation of his committee's functions to Bar Counsel cannot work, because that would be an improper by-pass of a due process safeguard, and there was no delegation authority had by the subcommittee. It was Mr. Ratliff's duty to know that, and to proceed accordingly. He knowingly ignored the rules.

109. Mr. Ratliff may have personally approved of Bar Counsel's vague "charges" of attorney misconduct, but they were not approved by his committee, and they did not conform to the requirements of the disciplinary rules.

110. By permitting and supporting Bar Counsel's usurpation and deception, Mr. Ratliff bears responsibility for the U. S. Constitutional violations that resulted, and he is liable for the very extensive damages to Plaintiff that followed.

111. Mr. Ratliff may also share responsibility for Bar Counsel's deceptive Affidavit of December 30, 2003, that appears to have misled the Virginia Supreme Court into thinking that the subcommittee had approved Bar Counsel's charges and authorized them for certification to the Disciplinary Board. That side-tracked an earlier remedy that could have come from the Virginia Supreme Court, greatly reducing the damages in this Federal claim for violations of Constitutional rights.

112. Accordingly, Mr. Ratliff is responsible for the continued deprivation caused to Plaintiff by the withholding of his law license, and for the damages from the defamation that continues along with it, as expected, in the normal course that his actions set, or let a vindictive Bar Counsel set.

113. Mr. Ratliff is responsible and liable to Plaintiff for the damages he suffered in lost income, costs and attorney fees, loss of standing in the community, public humiliation, mental anguish, and he should pay punitive damages, as well, because his actions need to be punished, and others need to be deterred from such arbitrary and capricious conduct that is callous and wanton, violating fundamental rights, and repugnant to any decent member of the community.

COUNT III. DEFENDANT BARBARA SAYERS LANIER'S VIOLATIONS

113. All of the above paragraphs, with special emphasis on paragraphs 55-62, are incorporated in this Count III, Defendant Barbara Sayers Lanier's Violations. They show that Disciplinary System Clerk Lanier acted under color of state law, but outside of her authority and outside of the law, with respect to Bar Counsel's improper charges against Plaintiff.
114. The stated facts show that Defendant Clerk Lanier was grossly negligent as to her duties and the law, and incompetent, at best, or that she acted in knowing complicity with the improper actions and deception of Noel Sengel and Stephen Ratliff.
115. Clerk Lanier acted outside her duties and normal functions, opening the way for an ill-based law license revocation without due process and in violation of equal protection of law. Before opening a case against an attorney, it was her duty to make sure that the Disciplinary Rules were followed, and their preconditions, especially with respect to jurisdiction, were met, but she did not.
116. Her actions, too, deprived Plaintiff of a Grand Jury type review of allegations before they were used as the basis for Disciplinary Hearing. That would have or could have reduced or clarified the vague charges from Bar Counsel Sengel.
117. Although Plaintiff notified her both before and after the Hearing of problems with it, clerk Lanier took no corrective actions. She too, was supposed to embody a safeguard of due process and nondiscrimination, but by negligence or by design, she put her guard down, opening the door to disciplinary action without jurisdiction and without due process.

118. By arranging the Disciplinary Board Hearing, without a proper foundation, and requiring Plaintiff to answer the vague and phony charges of Bar Counsel, Clerk Lanier shares in the responsibility for the U.S. Constitutional violations and the damages to Plaintiff that followed.
119. She was either incompetent and recklessly disregarding the law, or she was knowingly violating Virginia law and Plaintiff's rights under the United States Constitution to due process of law and equal protection of law.
120. Accordingly, Clerk Lanier is responsible for the continued deprivation caused to Plaintiff by the withholding of his law license, and for damages from the defamation publication that went with it, and which she, herself, arranged or directed.
121. Ms. Lanier is responsible and liable to Plaintiff for the damages he suffered in lost income, costs and attorney fees, loss of standing in the community, public humiliation, mental anguish and emotional distress, and she should pay punitive damages, as well, because her actions that hurt so many so severely need to be punished, and others need to be deterred from such arbitrary and capricious conduct that is callous and wanton, violating fundamental rights, and repugnant to any decent member of the community.

COUNT IV. DEFENDANT KAREN GOULD'S VIOLATIONS

122. All of the above paragraphs, with special emphasis on paragraph 70-82, are incorporated in this Count IV, Defendant Karen Gould's Violations. They show that Disciplinary Board Chair Gould acted under color of state law, but outside of her authority and outside of

the law, with respect to Bar Counsel's improper charges against Plaintiff, violating Plaintiff's U.S. Constitutional rights to Due Process and Equal Protection of Law.

123. The stated facts show that Defendant Karen Gould was disregarding the law and was incompetent, or that she acted in knowing complicity with the improper actions and deception of Noel Sengel and Stephen Ratliff, and perhaps Barbara Lanier.

124. Karen Gould acted outside of her duties and normal functions, disregarding well-established and clear disciplinary rules, and opening the way for an ill-based law license revocation, without due process and in violation of equal protection of law.

125. Before starting a disciplinary Board Hearing, it was her duty to make sure that the disciplinary rules were followed, and their preconditions, especially with respect to jurisdiction, were met, but she did not. She commenced a Hearing without clear and concise charges, without charges from the committee that could make and certify them, and without jurisdiction.

126. Karen Gould's actions in the course of the Hearing, as the chair person, also deprived Plaintiff of due process.

127. Although the board was to find violations only on the basis of clear and convincing evidence, Defendant Gould agreed to false application of *res judicata*, for which there was no sound basis. That led to a law license revocation without the required evidence to support it.

128. In her Memorandum Order of License revocation, dated July 10, 2003, Ms. Gould made many errors of fact and law, and she failed to get the other Disciplinary Board members to join with her in that order, depriving it of Disciplinary Board authority. It was her own unauthorized action of defamation of Plaintiff.

129. That Memorandum Order attacked Plaintiff's honesty, character and fitness to practice law with no good basis in fact, law, or Disciplinary Board authority.

130. Karen Gould was both incompetent and recklessly disregarding the law or she was knowingly violating Plaintiff's rights under Virginia law and the United States Constitution.

131. Accordingly, Ms. Gould is responsible for the continued deprivation caused to Plaintiff by the withholding of his law license, and for the damages from the on going publication of defamation that goes with it, and which she, herself, created.

132. Ms. Gould is responsible and liable to Plaintiff for the damages he suffered in lost income, costs and attorney fees, loss of standing in the community, public humiliation, mental anguish and emotional distress, and she should pay punitive damages, as well, because her actions that hurt so many so severely need to be punished, and others need to be deterred from such arbitrary and capricious conduct that is callous and wanton, violating fundamental rights, and repugnant to any decent member of the community.

COUNT V. DEFENDANT STEPHEN HALL'S VIOLATIONS

133. All of the above paragraphs, with special emphasis on paragraphs 83-92, are incorporated in this Count V, Defendant Stephen Hall's Violations. They show that Assistant Attorney General Hall acted under color of state law, but outside of his duties and outside of the law, with respect to Bar Counsel's improper charges against Plaintiff, and error-filled disciplinary hearing, without jurisdiction.

134. In knowingly supporting those wrongful actions, giving false pleadings and false testimony to bolster them, this Defendant, too, violated Plaintiff's U.S. Constitutional rights to Due Process and Equal Protection of law.
135. The stated facts show that defendant Stephen Hall was incompetent and disregarding the law, or he acted in knowing complicit with the improper actions and deception of Ms. Noel Sengel and Mr. Stephen Ratliff, and perhaps of Ms. Lanier and Karen Gould.
136. Mr. Hall's misrepresentations to the Supreme Court of Virginia resulted in the court's failure to provide the narrow state remedy plaintiff sought there.
137. That has resulted in long-term withholding of Plaintiff's law license, and long-term published defamation of plaintiff, prepared from the vague and phony charges of misconduct from Bar Counsel, and as signed by Karen Gould in her Memorandum Order, without jurisdiction, and without disciplinary board authority.
138. Stephen Hall is responsible and liable to Plaintiff for the damages he suffered in lost income, costs and attorney fees, loss of standing in the community, public humiliation, mental anguish and emotional distress, and she should pay punitive damages, as well, because her actions that hurt so many so severely need to be punished, and others need to be deterred from such arbitrary and capricious conduct that is callous and wanton, violating fundamental rights, and repugnant to any decent member of the community.

DEMAND FOR JUDGEMENT

139. For Defendants' violations of Plaintiff's U.S. Constitution rights to Due Process and Equal

Protection of Law, and the libelous publication of an improper and ill-based revocation of law license, that attacked Plaintiff's character, honesty, and fitness to practice his profession, and that was damaging to Plaintiff's professional standing, his standing with his friends, and his good name in the community, Plaintiff requests judgment in his favor against the defendants, jointly and severally.

CLAIM FOR RELIEF

140. Plaintiff requests a Declaratory Judgment that the defendants violated his right to Due Process and Equal Protection of Law in their roles in his law license revocation and in the publication of defamation that went with it.
141. Plaintiff requests readmission to the Virginia State Bar.
142. Plaintiff claims compensation for lost income of $5000-$7000 per month from the time his license was revoked on June 27, 2003 until his readmission.
143. Plaintiff claims his costs and expenses in dealing with Bar Counsel's improper "charges" of misconduct, totaling about $5500.
144. For damage to his reputation from the publication of the baseless findings of misconduct and improper license revocation, Plaintiff seeks $600,000 in damages.
145. Plaintiff claims double the amounts of compensatory damages in punitive damages to punish and deter such arbitrary and capricious, callous and cavalier, violations of U.S. Constitutional rights to property and liberty to practice one's profession.
146. Plaintiff seeks his attorney fees and cost for this acton, as authorized by 42 U.S.C. 1983, and as provided by the Civil rights Attorney's Fees Awards Act of 1976, 42

U.S.C. 1988, because taking and denying Plaintiff's law license and publishing defamation about it was without jurisdiction and in violation of Due Process and Equal Protection of law.

So respectfully claimed,

/ S / *R. Wm. Konan*

Raymond W. Konan
Plaintiff, pro se
June 20, 2006

VERIFICATION OF COMPLAINT

Plaintiff Raymond W. Konan, proceeding *pro se*, verifies that he prepared the forgoing Amended Complaint and he has read this Amended Complaint, and that it represents true facts, and correct statements of law, to the best of his knowledge and belief, after inquiry.

/ S / R. Wm. Konan

Raymond W. Konan
Plaintiff, *pro se*
Cell 571-331-9700
Email: mediatorkonan@bellsouth.net
June 20, 2006

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday ***the 13th day of*** February, 2004.

Raymond William Konan,
Appellant,

against

Record No. 032298
VSB Docket Nos. 00-052-3465
And 01-052-0361

Virginia State Bar,
Appellee.

Upon appeal of right from an order entered by the Virginia State Bar Disciplinary Board.

Upon consideration of the record, briefs, and argument by the Appellant, in proper person, and by counsel for the appellee, the Court is of opinion there is no error in the order of Virginia State Bar Disciplinary Board ("the Board") revoking Raymond W. Konan's ("Konan") license to practice law in this Commonwealth.

The record shows that the Board entered its written opinion revoking Konan's license to practice on July 10, 2003, with the revocation effective as of June 27, 2003, the date of its summary order. Konan timely mailed his notice of appeal containing assignments of error, within the thirty day time period required by the Rules of Court, Pt. 6, IV, Para. 13 (J) (2). However, in his opening brief to this Court, Konan asserted new assignments of error 1, 2, 4, and 7 which were not stated with reasonable certainty in the notice of appeal. Accordingly, these new assignments of

error are not timely and cannot be considered on appeal. Rules of Court, Pt. 6, IV, Para. 13(H) (2). ("This action within the time prescribed is jurisdictional."); see e.g., Delk v. Virginia State Bar, 233 Va. 187, 190, 355 S.E. 2d 558, 560 (1987). The Court will address appellant's remaining assignments of error.

In reviewing the Board's decision, the Court conducts an independent examination of the entire record. El-Amin v. Virginia State Bar, 257 Va. 608, 612, 514 S.E.2d 163, 165 (1999); Meyers v. Virginia State Bar, 226 Va. 630, 632, 312 S. E.2d 286, 287 (1984). The Court considers the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the Bar, the prevailing party in the Board proceeding. El-Amin, 257 Va. At 612, 514 S.E. 2d at 165; Gunter v. Virginia State Bar, 238 Va. 617, 619, 385 S.E.2d 597, 598 (1989). The Court gives the Board's factual findings substantial weight and views them as prima facie correct. El-Amin, 257 Va. at 612, 514 S.E.2d at 165; Myers, 226 Va. at 632, 312 S.E. 2d at 287.

With regard to assignment of error 3, Konan contends that the Board's findings were not supported by clear and convincing evidence. However, the record establishes that Konan violated the Disciplinary Rules and the Rules of Professional Conduct on numerous occasions by engaging in conduct designed to mislead, deceive, and defraud the trial court. Furthermore, there is clear and convincing evidence in the record that Konan violated rules concerning competency, misconduct, diligence, communication, and representing clients within the bounds of the law. There was more than sufficient credible evidence in the record to support the Board's findings.

With regard to assignment of error number 6, Konan alleges the Board failed to follow the appropriate procedures and thus its actions and the resulting sanction

were ultra vires and beyond the scope of its authority. Specifically, Konan asserts that because Noel Sengel ("Sengel"), senior assistant bar counsel for the Virginia State bar ("Bar") and prosecutor in the action against Konan, signed the certification of charges of misconduct from the District Committee on the Chairman's behalf, the Board did not acquire jurisdiction to hear the case. Konan did not raise this issue before the Board or in his opening brief, but by a later filed Motion to Vacate Revocation. While subject matter jurisdiction can be raised for the first time on appeal, the Court finds Konan's assertion to be without merit.

Although the Rules of Court provide for the certification of charges of attorney misconduct to the Board, see Rules Pt. 6, IV, Para. 13 (G) (1) (b), the Rules do not specify the method of certification by the District Committee to the Board. Sengel submitted an affidavit to this Court stating she "drafted the certification at the Subcommittee's direction," and sent a copy to the chairman of the subcommittee for his approval and signature. Once approved, the chairman authorized Sengel to sign the certification form on his behalf, which Sengel did, noting her own initials below the signature line to indicate who had actually signed it. Konan did not make an objection to this Court's consideration of Sengel's affidavit.

Part 6, IV, Para. 13 (E) (1) of the Rules provides that "substantial compliance with the provisions hereof shall be sufficient, and no Charge of Misconduct shall be dismissed on the sole ground that any such provision has not been strictly complied with." Since the Rules provide no specific method by which certification is to be made, and as the signature for certification was authorized in this case, the certification from the District Committee substantially complied with the procedures set forth in the Rules and vested the Board with jurisdiction over the matter.

In addition to his argument that the Board was without jurisdiction, Konan also avers through assignment of error 6 that the Board revoked his license without making the requisite determination that Konan's "continued practice of law constitutes an imminent danger to the public." However, such a finding is only required by the Rules when expedited hearing is sought by Bar counsel or a District Committee chairperson. See Rules Part 6, IV, Para, 13 (I) (1) (b) (1); Part 6, IV, Para. 13(B) (5) (a) (6). The charges against Konan were not adjudicated pursuant to the expedited hearing process and thus an "imminent threat" determination was not required.

In assignment of error 5, Konan contends that revocation of his license to practice law was an abuse of discretion by the Board and not proportional to any acts of misconduct he may have committed. The record shows that Konan had been sanctioned over $20,000 for multiple actions taken before the trial court. In addition, Konan was held in contempt of court for failing to pay the sanctions. Based on the charges certified by the District Committee, the Board found that Konan had violated, inter alai; DR 7-102 (A) (2), (3), and (5) and analogous Rule 3.1 (Representing a Client within the Bounds of the Law); DR 1-102 (A) (3) and (4) and analogous Rule 8.4 (committing deliberately wrongful act and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation reflecting adversely on the lawyer's fitness to practice law); and DR 6-101 and analogous Rules 1.1, 1.3. and 1.4 (competence and promptness).

When discussing Konan's violations the Board explained:

The facts discussed above are examples of the conduct engaged in by Mr. Konan. There was additional testimony and documentary evidence of similar behavior. It was the totality of the evidence, as established by the

testimony and the documentary evidence, that persuaded the Board that Mr. Konan had engaged in a pattern and practice of ill founded and vexatious litigation, and that he did not consider himself bound by any duty of truthfulness. He played fast and loose with the truth in his factual representations to the court, as in his legal pleadings, irrespective of whether they were based in law or fact.

When determining the appropriate sanction, the Board considered Konan's lack of remorse, his prior receipt of both public and private reprimands, and his failure to amend his behavior. The Board found Konan "was a danger to the integrity of the legal system in Virginia." Given the Board's thorough documentation of Konan's violations of the Disciplinary Rules and the Rules of Professional Conduct as well as our independent review of the entire record, the Court finds the Board's decision to revoke Konan's license was not an abuse of discretion.

For the reasons set forth above, all of Konan's motions are denied and the order of the Disciplinary Board is affirmed. The appellant shall pay to the appellee thirty dollars damages.